EX PARTE OR LATE FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

REPLY COMMENTS OF
COMSAT MOBILE COMMUNICATIONS

COMSAT Corporation, through its COMSAT Mobile Communications business unit ("CMC"), the U.S. Signatory to the International Maritime Satellite Organization ("Inmarsat"), replies herein to Comments filed by American Mobile Satellite Corporation ("AMSC") and Constellation Communications, Inc. ("Constellation") on June 20, 1994, in this proceeding.

On May 20, 1994, the Commission released a Further Notice of Proposed Rulemaking ("FNPRM") in this proceeding. In the FNPRM, the Commission proposes, inter alia, to place a cap on the amount of spectrum a provider of commercial mobile radio services ("CMRS") may use to provide CMRS in a particular geographic market.[1] The Commission's principal aim in proposing a spectrum cap is "to forestall the potentially anti-competitive consequences of spectrum aggregation in an evolving and diverse

---

[1] The Commission has previously decided that "to the extent a satellite space station licensee or other entity provides end users a service that meets the elements of our CMRS definition, or is the functional equivalent of CMRS, we would regulate the provision of service by the licensee or other entity as common carriage." (FNPRM ¶ 97 n.171.)

mobile services marketplace" (FNPRM ¶ 89):

> "[O]ur primary concern is that if we permit any licensee to acquire a large amount of spectrum relative to its competitors, we could potentially foreclose opportunities for others to compete in the same geographic area. Under this approach, individual CMRS services that do not compete directly with one another could arguably be viewed as sub-markets, and a licensee with sufficient spectrum in each sub-market would, as a result of its spectrum holdings, exercise market power in the general CMRS market." (FNPRM ¶ 91.)

Among the questions raised about the spectrum cap, the FNPRM requested comment on "whether any or all satellite licensees offering CMRS services should be included in a CMRS spectrum cap." (FNPRM ¶ 97.) Assuming a cap were applied to satellite services, the FNPRM asked for comment about various implementation issues, including "whether a spectrum cap may be properly applied to the space segment itself or should only be applied to the earth station licensee," "how to measure satellite spectrum for purposes of a cap," "whether we should subject satellite CMRS providers to the spectrum cap only upon completion of international coordination for the space segment they propose to use," and "should the cap be applied in the mobile satellite service bands only and not in the fixed satellite bands?"

AMSC and Constellation contend that application of a spectrum cap to the MSS would be inappropriate policy because "the MSS service is generally designed to serve areas that have no alternative means of obtaining mobile telephony" and therefore "CMRS providers of MSS will complement rather than compete with terrestrial CMRS providers." (Constellation at 2; see AMSC at ii, 11 n.16.) Constellation also argues that "it would be

exceedingly difficult to design a spectrum cap for MSS because of the dynamic nature of spectrum assignment policies contemplated for the 1.6/2.4 GHz bands" and because of the nature of the international coordination process. (Constellation at 2-3; see AMSC at 3-5.)

CMC agrees with AMSC's and Constellation's conclusion that any CMRS spectrum cap should not apply to MSS spectrum. MSS is simply not economically competitive with cellular and other terrestrially based CMRS services, and hence is intended principally to provide service to areas that have no alternative means of mobile communications. Thus, if geographic markets were properly defined in terms relevant to actual or potential competition, MSS providers would not properly be viewed as providing service in the same geographic markets as cellular or other terrestrial CMRS providers. For this reason, MSS providers could not forestall competition in particular geographic areas by aggregating MSS and other CMRS spectrum. The FNPRM's rationale for the proposed cap therefore does not apply to MSS spectrum.

There would also be very serious difficulties in attempting to apply a cap to MSS reasonably and fairly, because assignments of spectrum for MSS service providers are not comparable to assignments for terrestrial CMRS. Due both to the nature of domestic assignments and the requirements of international coordination, MSS assignments are typically for spectrum shared with other service providers. For this reason, as AMSC points out (at 8), the amount assigned to an MSS licensee typically is

the maximum amount of spectrum the licensee theoretically may access; the actual amount of spectrum the licensee will actually be able to use is typically much less.

As shown by AMSC (at 8-9) and Constellation (at 2-3), this is particularly due to the vagaries and uncertainties of the international coordination process. As Constellation notes (at 3), international coordination "is an on-going process that could result in changes in system parameters immediately, subsequent to licensing, or many years thereafter." Indeed, Inmarsat is currently coordinating its use of L-Band frequencies it has been using since 1982 with four proposed systems over North America and numerous other proposed systems elsewhere. (See AMSC at 3-4 & n.6.)

Application of a cap to CMC's provision of Inmarsat services for either space stations or earth stations would be particularly inappropriate. CMC uses L-Band spectrum allocated to MSS via the Inmarsat space segment along with many other land earth station ("LES") operators (including other Inmarsat Signatories and IDB Mobile Communications). These LES operators also use substantial portions of the FSS allocations at C-Band (6/4 GHz) for Inmarsat feeder link operations, that is, communications between the shore-based LESs and the current (Inmarsat-2) spacecraft. Each LES operator utilizes the L-Band service link frequencies on a "demand-assigned" basis; its use of any particular channel is limited to the times it is actually transmitting or receiving a message to/from a mobile user on that

channel. COMSAT thus does not have exclusive use of any of the spectrum used to provide service via the Inmarsat system.[2]

In the future, both the Inmarsat-3 satellites (to be launched in 1995), as well as the planned baseline for Inmarsat-P, will be making much higher demands on FSS bands for feeder link operations because the RF bandwidths used on the MSS service links will be replicated in the FSS feeder link bands roughly as a multiple of the number of spot beams in use. (See id.) Hence, application of a cap to feeder link spectrum would dramatically limit the ability to use spot beams, which are designed to conserve limited spectrum resources.

---

[2] See Constellation at 3 n.6. Nor would it be feasible, or appropriate, to try to apply such a cap to Inmarsat. It would be meaningless to attempt to apply the cap to Inmarsat per se, since Inmarsat is not a service provider, and hence would not apply for authority to provide other CMRS services. And it would make no sense to apply the cap to CMC based on the spectrum used by all Signatories as a group. The thing that is unique about the Inmarsat system is that it has been designed to foster intrasystem competition among LES operators. Since the LES operators already compete to provide service to mobile users, it would make no sense to treat the spectrum they use as if it were being used by a single service provider for purposes of applying a cap intended to promote competition.

Conclusion

As shown by AMSC and Constellation, application of a spectrum cap to MSS services would not promote the goals of the FNPRM. Furthermore, the Commission would face grave difficulties in attempting to apply a cap to MSS in a fair and reasonable manner. For these reasons, the Commission should decide not to apply any spectrum cap to MSS services.

Respectfully submitted,

COMSAT CORPORATION
COMSAT Mobile Communications

By: 

Neal T. Kilminster
Assistant General Counsel
Nancy J. Thompson
General Attorney
22300 Comsat Drive
Clarksburg, MD 20871
(301) 428-2511

Its Attorneys

July 11, 1994

CERTIFICATE OF SERVICE

I, Pamela L. Sonneville, hereby certify that the foregoing "Reply Comments of COMSAT Mobile Communications" was served by first-class mail, postage prepaid, this 11th day of July, 1994, on the following persons:

Philip L. Malet, Esq.
Alfred M. Mamlet, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch
Leventhal, Senter & Lerman
2000 K Street, N.W., #600
Washington, D.C. 20006

Jill Abeshouse Stern, Esq.
Jane M. Sullivan, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

William D. Wallace
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595

Bruce D. Jacobs
Glenn S. Richards
Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Lon C. Levin
Vice President and Regulatory Counsel
American Mobile Satellite Corporation
10802 Parkridge Boulevard
Reston, Virginia 22091

Dale Gallimore, Esq.
Counsel
Loral Qualcomm Satellite Services, Inc.
7375 Executive Place, Suite 101
Seabrook, MD 20706

Gerald Hellman, Esq.
Vice President
Policy and International Programs
Mobile Communications Holdings, Inc.
1120 - 19th Street, N.W.
Washington, D.C. 20036

Robert A. Mazer
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, N.W.
Suite 800
Washington, D.C. 20005

Leslie A. Taylor
LESLIE TAYLOR ASSOCIATES
6800 Carlynn Court
Bethesda, MD 20817-4302

Mary Brooner
Manager, Wireless Regulatory Policies
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005

Pamela L. Sonneville
Pamela L. Sonneville